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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,016	11/14/2003	Clifford L. Wolfe	211-01 US	8386

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EXAMINER

GREENHUT, CHARLES N

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/712,016		WOLFE, CLIFFORD L.	
	Examiner		Art Unit	
	Charles N. Greenhut		3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/13/06 & 5/10/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 18-19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

I. Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/13/06 has been entered.

II. Specification

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

III. Claim Objections

1. Claim 15 is objected to because, "moving substantially straight in a substantially horizontal direction the load platform with the load from the lift support base" in lines 23-24 should read, - -moving the load platform with the load substantially straight in a substantially horizontal direction ~~the load platform with the load~~ from the lift support base- -, in order to clarify what is moved.
2. Claim 16 is objected to because, "the left hand side gear mechanism and the right hand side gear mechanism is connected" should read, - -the left hand side gear mechanism and the right hand side gear mechanism are connected- -.

IV. Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 3-5, and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. With respect to claim 3, it is unclear what is meant by the phrase, "acting in response to" in line 5.

V. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 1-11, and 15-17 and is/are rejected under 35 U.S.C. 103(a) as being unpatentable over WOLFE (US 5,052,879 A) in view of MCFARLAND (US 4,573,854 A).

1.1. With respect to claim 1-3, 6, and 10-11, WOLFE discloses a horizontally movable load platform (7) supported by wheels (19) having a drive mechanism (15), a base (18), a lift support base (6), mechanically connected (via 9) to a right and left hydraulic lift actuator (5)/(Fig. 17 #10) and oriented substantially perpendicular to the lift support base (e.g., Fig. 8), gear mechanism (9)/(17) movably attached to the left and right lift actuators and to the extension unit (25). WOLFE is silent as to whether

the gear mechanism comprises a left and right gear mechanism movably attached to respective left and right hand sides of the base and the apparatus for transferring a load through the rear of a vehicle. MCFARLAND teaches left and right gear mechanisms (36)/(38) movably attached to left and right hand sides of the base (18). It would have been obvious to one of ordinary skill in the art to modify WOLFE with the left and right gear mechanism attachment points of MCFARLAND in order to stably pivot the platform into a storage position. MCFARLAND additionally teaches loading through the rear of the vehicle. It would have been obvious to one of ordinary skill in the art to modify WOLFE with the loading location of MCFARLAND in order to accommodate vehicles more suited to rear loading.

- 1.2. With respect to claim 4-5, WOLFE additionally discloses a toothed gear drive (Fig. 13) driven by an electric motor (8), however WOLFE fails to disclose the toothed gear drive for providing the translational movement of the extension unit. WOLFE teaches the translational movement provided by a piston (14). It would have been obvious to one of ordinary skill in the art to modify WOLFE with the motor driven toothed gear drive providing the translational movement of the extension unit because a piston and a motor driven toothed gear drive are known in the art as equivalent and interchangeable actuation means.
- 1.3. With respect to claims 7-9, WOLFE additionally discloses the drive mechanism comprising a friction and chain drive (15) interacting with a toothed gear (20)/(44) driven by an electric motor (8) powered by a vehicle battery (Fig. 18 #1).

1.4. With respect to claims 15-17, WOLFE discloses a lift support base (6) supporting a load platform (7), mechanically connected (via 9) to a right and left lift actuator (5) movably attached to a base (18) mounted inside a vehicle to a floor (21), and oriented substantially perpendicular to the lift support base (e.g., Fig. 8), gear mechanism (9)/(17) movably attached to the left and right lift actuators and to an extension unit (25) which is moved from partially outside the vehicle (Fig. 5) to within the vehicle (Fig. 1), disposing a load on the platform and using the lift actuators to move substantially straight in a substantially vertical direction (Fig. 11 to 10) to a position suitable for moving substantially straight in a substantially horizontal direction the load platform in to the vehicle (Fig. 9), moving substantially straight in a substantially horizontal direction the load platform through a door opening (Figs. 4-3) in to the vehicle (Fig. 9) using the gear mechanism (9)/(17), translationally and rotationally (Figs. 7-6) moving the lift support base through the door opening (Figs. 2-1) to a position inside the vehicle (Fig. 1) where the lift support base (6) is oriented in proximity to the door and substantially vertical (Fig. 1). WOLFE is silent as to whether the gear mechanism comprises a left and right gear mechanism movably attached to respective left and right hand sides of the base and the apparatus for transferring a load through the rear of a vehicle. MCFARLAND teaches left and right gear mechanisms (36)/(38) movably attached to left and right hand sides of the base (18). It would have been obvious to one of ordinary skill in the art to modify WOLFE with the left and right gear mechanism attachment points of MCFARLAND in order to stably pivot the platform into a storage position. MCFARLAND additionally

teaches loading through the rear of the vehicle. It would have been obvious to one of ordinary skill in the art to modify WOLFE with the loading location of MCFARLAND in order accommodate vehicles more suited to rear loading.

VI. Allowable Subject Matter

1. Claim 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

- 1.1. With respect to claims 18-19, the following is a statement of reasons for the indication of allowable subject matter:

- 1.1(a) While the WOLFE and MACFARLAND teach the method of moving a load by using an platform and employing horizontal and translational motion via a linkage to dispose both the platform and a lift support base vertically within a vehicle, a method for transferring a load through a rear door of a vehicle, as described in the language of claims 15 and 16, that further includes the unique feature of a an extension unit moved from outside the vehicle to within the vehicle, the load platform being moved onto that extension unit, as detailed in the language of claims 17 and 18 is not taught or fairly suggested by the prior art.

2. Claims 12-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

- 2.1. With respect to claims 12-14 the following is a statement of reasons for the indication of allowable subject matter:

2.1(a) While the WOLFE and MACFARLAND teach apparatus moving a load platform into a vehicle, an inside vehicle lift for transferring a load through a rear door opening of a vehicle, as described in the language of claims 1-3, that further includes the unique feature of a gear mechanism comprising the linkage arrangement described in the language of claim 12, is not taught or fairly suggested by the prior art.

VII. Response to Applicant's Arguments

Applicant's arguments filed 5/9/06 have been fully considered.

1. Applicant argues that claim 15, as amended, is not anticipated by MCFARLAND. This argument is persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made over WOLFE in view of MCFARLAND as discussed above.
2. Applicant argues that claim 17, as amended, is not anticipated by MCFARLAND. This argument is persuasive. Therefore, the rejection has been withdrawn.
3. Applicant argues that claim 1-3, as amended, is not rendered obvious by WOLFE. This argument is persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made over WOLFE in view of MCFARLAND as discussed above.
 - 3.1. Applicant argues that WOLFE does not teach "the lift support base...substantially perpendicular...to the actuator." This argument is not persuasive. Firstly, applicant notes that the WOLFE lift support base is capable of angles ranging from 0° to over 90°. From this it can be inferred that at some point the angle formed between the

components is substantially 90°. Regardless, while admittedly not exactly 90°, Figure 11 shows an angle of substantially 90° within the broadest reasonable interpretation of that term.

3.2. Applicant argues that WOLFE does not teach “...substantially vertical...” This argument is not persuasive. Movement from the figure 11 to the figure 10 position is substantially vertical within the broadest reasonable interpretation of that term.

3.3. Applicant argues that WOLFE does not teach “[the] lift unit...[and] gear mechanism” as required by claim 1. This argument is not persuasive. These limitations, as recited in claim 1, are rendered obvious by WOLFE in view of MCFARLAND as discussed above. Examiner acknowledges the differences between the gear mechanism of WOLFE and the gear mechanism as it is described in applicant’s preferred embodiment, however, additional structural details related to the “gear mechanism” are required to distinguish over the prior art. Applicant is reminded that claim terms are given their broadest reasonable interpretation and although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

3.4. Applicant argues that WOLFE does not teach the claimed extension unit because rod (25) would not be considered an “extension unit” by one having ordinary skill in the art, and furthermore the rod is attached to a cylinder which is attached to the vehicle frame and not the base. Neither of these arguments are persuasive. Firstly, rod (25) can properly be considered an “extension unit” within the broadest reasonable interpretation of that term. Secondly, the phrase, “attached to the base” does not

necessarily exclude attachment via the cylinder and vehicle frame. Examiner acknowledges the differences between the extension unit of WOLFE and extension unit as it is described in applicant's preferred embodiment, however, additional structural details of the extension unit are required to distinguish over the prior art. Applicant is reminded that claim terms are given their broadest reasonable interpretation and although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

4. Applicant argues that claim 1 cannot be rendered obvious by WOLFE in view of MCFARLAND because such a combination would require major changes to the vehicle. This argument is not persuasive. The test for obviousness is not whether the features of the secondary reference MCFARLAND may be bodily incorporated into the structure of the primary reference WOLFE, the test is what the combined teachings of WOLFE and MCFARLAND would have suggested to those of ordinary skill in the art. It is not necessary that the inventions of WOLFE and MCFARLAND be physically combinable to render obvious the invention under review. Combining the teachings of WOLFE and MCFARLAND does not require the ability to combine their specific structures.
5. Applicant argues that claim 12 is not rendered obvious by WOLFE because the linkage mechanism, as described in that claim, would not be rendered obvious to one having ordinary skill in the art. This argument is persuasive. Therefore, the rejection based on prior art has been withdrawn. Claim 12 stands rejected only under 35 U.S.C. 112 2nd paragraph because applicant is required to clarify the phrase "acting in response to" used in parent claim 3.

6. Applicant's argument with respect to the propriety of the rejection of claim 13 is deemed moot in light of the withdrawal of the rejection of parent claim 12 and is not addressed.
7. Applicant argues that the finality of the previous office action was inappropriate because it is unclear how the phrase, "approximately linearly" necessitated the new grounds of rejection. Applicant's argument with respect to the propriety of the finality of the previous office action is deemed moot in light of the fact that applicant filed a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. It is noted however, that applicant's assertion is premised on the notion that the added phrase, "approximately linearly" has an insubstantial effect on the scope of the claims. This position is entirely contrary to the arguments asserted on page 12-13 of applicant's remarks entered 11/18/05, in which applicant vehemently asserts that MCFARLAND fails to anticipate claim 1, at least in part, because of the phrase "approximately linearly." This phrase is clearly capable of necessitating the new grounds for rejection.

VIII. Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.

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3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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